

## STRANGULATION OR SUFFOCATION

G.L. c. 265, § 15D

- I. Strangulation
- II. Suffocation

### I. Strangulation

The defendant is charged with strangulation.

To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

- First:** that the defendant intentionally applied pressure on the throat or neck of [*the alleged victim*];
- Second:** that the pressure was substantial; and
- Third:** that the pressure interfered with the (normal breathing) (circulation of blood) of [*the alleged victim*].

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant intentionally applied pressure on the throat or neck of [*the alleged victim*]. The Commonwealth must prove that the defendant consciously and deliberately intended the touching to occur and that it was not merely accidental or negligent. You may examine any evidence regarding the

**defendant's actions or words, and all the surrounding circumstances to determine whether the defendant intended to apply pressure to the throat or neck of [the alleged victim].**

General Laws c. 265, § 15D is a general intent crime. See *Commonwealth v. Lahens*, 100 Mass. App. Ct. 310, 317 (2021). "The Commonwealth need not prove that a defendant specifically intended to interfere with a victim's normal breathing; the intentional commission of an act that results in said interference is all that the statute requires." *Id* at 318.

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the pressure was substantial. You may consider evidence, if any, about how, where, when, and for what duration the pressure was applied, as well as any evidence of its effect or impact on [the alleged victim].**

See *Commonwealth v. Rogers*, 96 Mass. App. Ct. 781, 784-785 (2019) (finding "substantial pressure" not so vague that a jury could not understand its meaning).

**To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the pressure that was applied interfered with the (normal breathing) (circulation of blood) of [the alleged victim].**

**If the Commonwealth has proven all three elements beyond a reasonable doubt, you should return a verdict of guilty. If the**

**Commonwealth has failed to prove one or more of the elements beyond a reasonable doubt, you must find the defendant not guilty.**

**II. Suffocation**

**The defendant is charged with suffocation.**

**To prove the defendant guilty of this offense, the Commonwealth must prove two things beyond a reasonable doubt:**

***First:* that the defendant intentionally blocked the nose or mouth of [the alleged victim]; (and)**

***Second:* that the defendant's action interfered with the (normal breathing) (circulation of blood) of [the alleged victim].**

**To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant intentionally blocked the nose or mouth of [the alleged victim]. The Commonwealth must prove that the defendant consciously and deliberately intended the touching to occur and that it was not merely accidental or negligent. You may examine any evidence regarding the defendant's actions or words, and all the surrounding circumstances to determine whether**

**the defendant intended to block the nose or mouth of [*the alleged victim*].**

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that, by blocking the nose or mouth, the defendant interfered with the (normal breathing) (circulation of blood) of [*the alleged victim*].**

**If the Commonwealth has proven both elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of the elements beyond a reasonable doubt, you must find the defendant not guilty.**

NOTES:

1. **Aggravated versions.** Strangulation or suffocation may be aggravated by (i) causing serious bodily injury; (ii) knowing or having reason to know that the victim is pregnant; (iii) knowing that there is an abuse prevention or restraining order in effect against the defendant; or (iv) having a prior conviction for strangulation or suffocation. G.L. c. 265, § 15D(c). Although the maximum penalty for the aggravated crime is ten years in state prison, the aggravated crime remains within the final jurisdiction of the District Court. G.L. c. 218, § 26. Applicable jury instructions for the aggravating factors can be found in Instruction 6.160 (assault and battery causing serious injury), Instruction 6.180 (assault and battery on a person protected by an abuse prevention order), Instruction 6.200 (assault and battery on a pregnant woman).

2. **Intimate Partner Abuse Education Program.** Any sentence or continuance without a finding for strangulation or suffocation must include a condition that the defendant complete an intimate partner abuse education program (formerly known as certified batterer's intervention program) unless "the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention." G.L. c. 265, § 15D(d).